Contracting Officer's Representative (COR)

Course XXXX xxxxxxxx 2007

"Any Mission, Anywhere!"

INTRODUCTION

- Welcome
- Administrative Matters
- Course Materials
- Course Objectives
- Agenda and Schedule
- Introductions

"Any Mission, Anywhere!"

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"Any Mission, Anywhere!"

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Administrative Matters

- Class starts at 0800 am.
- Breaks are usually 15 minutes. Please return to class on time.
- Cell phones must be turned off or muted.
- unless there are extenuating circumstances You may not miss more than 4 hours during the course .

FAR 1.102
GUIDING PRINCIPLES for the
FEDERAL ACQUISITION SYSTEM

THE VISION

1. Deliver to customers on timely basis, the BEST VALUE products and Services, while maintaining the Public's Trust & fulfilling Public Policy Objectives.

2.Participants in acquisition process shall WORK TOGETHER AS A TEAM & be EMPOWERED to make decisions within their area of responsibility.

INSTALLATION ACCESS CONTROL SYSTEM (IACS)

AE Reg. 190-16 & 190-16G (German language version) is the regulation on Installation Access Control System (IACS)

Requires Requiring Activity (RA) to "Sponsor" contractors accessing U.S. Installation.

CORs shall become familiar with the regulation, found at http://www.usacce.army.mil

CORs need to know their local point of

CONTRACTOR MANPOWER REPORTING

- **The Contractor Manpower Reporting (CMR) system is a business process established to:**
  - **Collect information on the funding source used to award a contract**
  - **The type of contract awarded**
  - **The name of the organization supported, the mission name and the function to be performed**
  - **Total labor hours and costs for contract efforts**

CONTRACTOR MANPOWER REPORTING

- **CMR will enable the Army to:**
  - **Fully understand the composition of the Army workforce and allow for more informed workforce staffing and funding decisions**
  - **Provide better oversight of our workforce, avoid duplication of work efforts**
  - **Better account for and explain our total Army workforce**

CONTRACTOR MANPOWER REPORTING

- **Website for additional information**
- **https://cmra.army.mil**
- **Local POC for Questions or additional information:**

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CONTRACTOR MANPOWER REPORT

SOLICITATION CLAUSE

CONTRACTOR MANPOWER REPORTING

The Contractor is required to report all Contractor manpower (to include subcontractor manpower) required for the performance of this contract. The contractor is required to completely fill in all the required fields in the reporting system using the following web address: https://cmra.army.mil. The Requiring activity will assist the Contractor with the reporting requirement as necessary. The Contractor may enter reports at any time during the reporting period, which is defined as the period of performance not to exceed 12 months ending 30 September of each Government fiscal year. Reporting must be completed no later than 31 Oct for every year or part of a year for which the contract is in place. Failure to comply with this reporting requirement will result in contract termination.

CONTRACTOR MANPOWER REPORT

- Contractors are entitled to reimbursement for reporting expenses. If funding is not available for CMR reporting, then requiring activities in cooperation with their resource management offices have to develop their best estimate and report the required data themselves.

CONTRACTOR MANPOWER REPORT

- Requiring Activities/COR's have to assist or enter the required data themselves when contractors are experiencing problems with the CMR process. A user guide with detailed instructions is available at the CMR website (*https://cmra.army.mil*).

CONTRACTOR MANPOWER REPORT

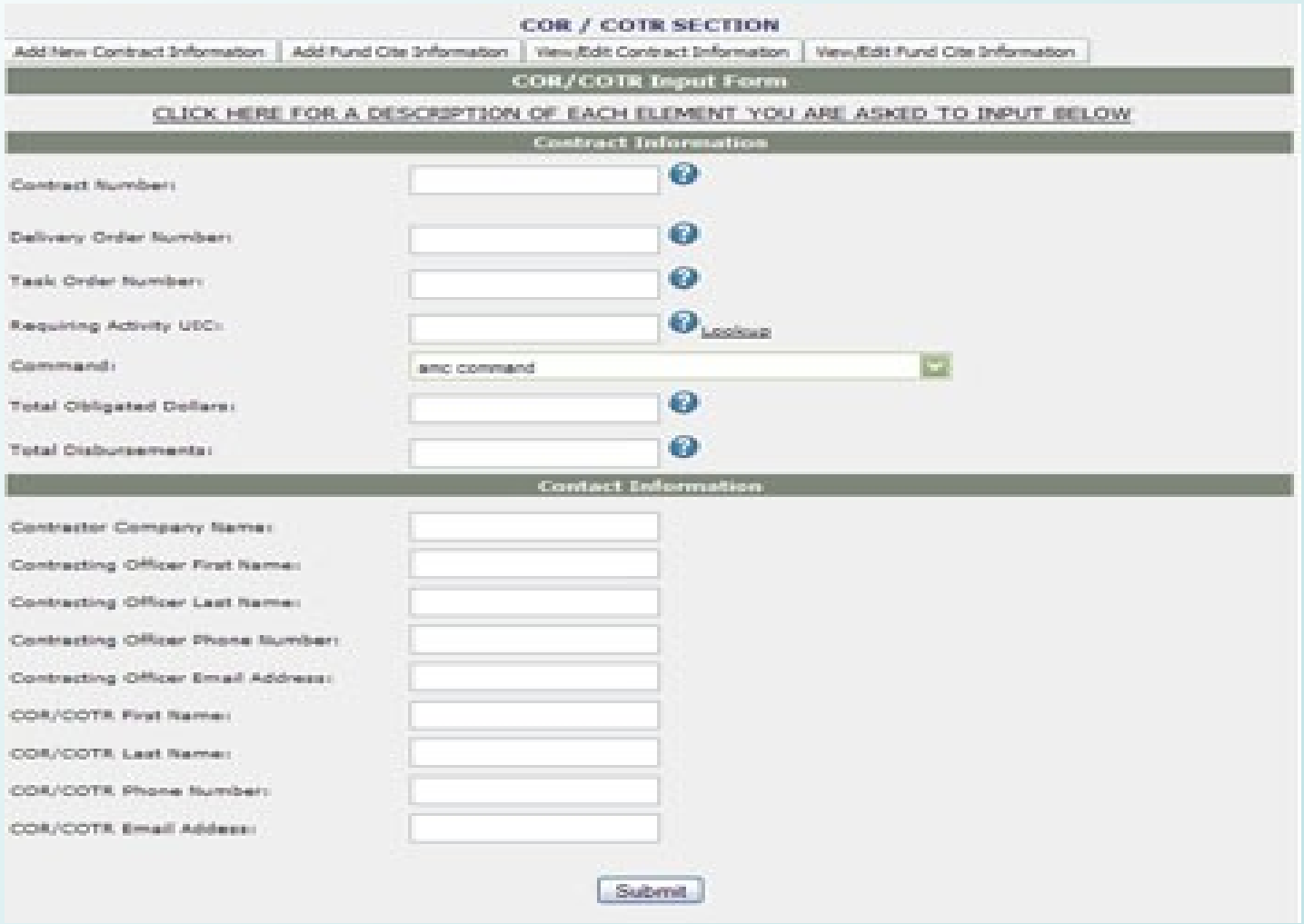
The preferred method of data entry is for the requiring activities/COR's to enter the following data:

- 1.Contract Number
- 2. Delivery Order Number (if applicable)
- 3. Task Order number (if applicable)
- 4. Unit Identification Code of the Activity Requiring the Services
- 5. Command
- 6. Total Obligated Dollars
- 7. Total Disbursements
- 8. Contact Information
- 9. Army Management Structure Code (AMSCO)
- 10. Department Code
- 11. Operating Agency
- 12. Basic Symbol (BSYM)
- 13. Fiscal Year Dollars
- 14. Element of Resource
- 15. Management Decision Execution Package (MDEP) (Contact your local RMO for current MDEP listing.)

CONTRACTOR MANPOWER REPORT

- Add new contract information. Enter basic contract information here. All fields require an entry, except that delivery and task orders fields require an entry as applicable.

CONTRACTOR MANPOWER REPORT



"Any Mission, Anywhere!"

CONTRACTOR MANPOWER REPORT

- Contract Number – Enter the full number without dashes. DoD contract numbers are 13 characters long beginning with the six position DoDAAC assigned to the office issuing the contract, e.g., W912CM.

- Delivery Order Number or Task Order Number – Enter without dashes. Contracts may have multiple orders. Each order requires a separate entry. On the second input screen, click on the drop-down menu to select the order number for which you are entering data.

CONTRACTOR MANPOWER REPORT

- Total Obligated Dollars – The total dollar amount obligated during the fiscal year at the delivery order or task order level.

- Total Disbursements – The total dollar amount paid during the fiscal year at the delivery order or task order level.

CONTRACTOR MANPOWER REPORT

- Requiring Activities/CORs must verify Unit Identification Codes(UICs) and Federal Service Codes (FSCs) to ensure that the data entered is correct.

- UICs are available at: https://contractormanpower.army.pentagon.mil/tasks/LKorganizationalcustomer2.cfm

CONTRACTOR MANPOWER REPORT

- FSCs are available at: https://contractormanpower.army.pentagon.mil/tasks/lookup_fsc.cfm

Standard Line of Accounting Data Elements

Example: 2172020 0000 0 B7 B7AF 13109663A91 21T2 2MNTBA TDY1234XX56X78 NTBA 2M 091089

Description	Data from Example	Length
Treasury Symbol		
Department Code (DP)	**21**	**2**
Fiscal Year (FY)	**7**	**1**
Basic Symbol (BS)	**2020**	**4**
Limit (LMT)	**0**	**4**
Program Year (PY)	**0**	**1**
Operating Agency (OA)	B7	2
Allotment Serial Number (ASN)	B7AF	4

Standard Line of Accounting Data Elements

Example: 2172020 0000 0 B7 B7AF 13109663A91 21T2 2MNTBA TDY1234XX56X78 NTBA 2M 091089

Description	Data from Example	Length
Army Management Structure Code (AMSCO)	**13109663A91**	**11**
Element of Resource (EOR)	**21T2**	**4**
Cost Center Code (CCC)	**2MNTBA**	**6**
Standard Document Number (SDN)	**For details, see DFAS-100-FY,**	**14**
Accounting Processing Code (APC)	**Chapter 2F-SDN**	**4**
DPI Code (DPI) (extension of APC)	**NTBA**	**2**
Fiscal Station Number (FSN)	**2M**	**6**

CONTRACTOR MANPOWER REPORT

- After the requiring activities/COR's have entered the relevant contract information, contractors will provide the following data:
  - Contractor contact information
  - Direct labor hours
  - Direct labor dollars
  - Total dollar amount invoiced dollars to include non-labor requirements.
  - Location information

CONTRACTOR MANPOWER REPORT

- Requiring activities/COR’s shall assist contractors with reporting and ensure that reporting is completed by 31 Oct for the preceding FY.

CONTRACTOR MANPOWER REPORT

- CMR is not required for foreign military sales, civil works, utilities and construction.

- CMR guidance is available on the CMR website (*https://cmra.army.mil*). The Frequently Asked Questions posted on the website are updated periodically.

CONTRACTOR MANPOWER REPORT

- For additional information or when you experience problems with the CMR reporting, please contact the CMR helpdesk at contractormanpower@hqda.army.mil or by telephone at 001-703-377-6199.

REFERENCES

1. THE FEDERAL ACQUISITION REGULATION (FAR)

2. The Department of Defense Supplement to the FAR (DFARS)

3. The Department of the Army Supplement to the FAR (AFARS)

4. The Army Contracting Command Acquisition Instruction (ACA AI)

5. The Army Contracting Command COR Handbook

ACQUISITION PROCESS

ACQUISITION

PLANNING

(Requiring Activity /Functional Organization)

Requirement Determination Of Need

Advance Acquisition Plan

Requirement Statement of Work (SOW)

Quality Assurance Surveillance Plan (QASP)

Independent Government Estimate (IGE)

Procurement Request Approvals / Justifications

CONTRACTING

(Contracting Office)

Synopsis Solicitation

Evaluation Sealed Bidding or Negotiation of Selection

Source Award

CONTRACT ADMINISTRATION

(Administrative Contracting Office)

"Any Mission, Anywhere!"

ACQUISITION PACKAGE

- **Determination of Need: What the Agency requires to be done**
- **Acquisition Plan: How the Agency plans to acquire their needs and any special requirements**
- **Statement of Work: Defines the Agency's requirement**
- **Quality Assurance Surveillance Plan(QASP): Defines how the work will be monitored to ensure the Government gets what it is paying for**
- **Independent Government Estimate (IGE): An estimate of how much the Government thinks the requirement will cost to perform**
- **Procurement Request: Certified Funding Document**
- **Other Documents: Requirement specific approvals, sole source or limited competition approvals, etc**

Advertisement (FAR Part 5 – Publicizing Contract Actions)

- **FEDBIZOPPS: Synopsis thru the Government-wide Point of Entry (Over $25,000)**
- **Public Notices: (> $10,000 but < $25,000)**
- **Exceptions to Publicizing Requirements:**
  - **FAR 6.202- Exceptions;**
  - **Oral quotes ; or**
  - **FACNET solicitation**

CONTRACTING

(CONTRACTING OFFICE)

SOLICITATION

- **Is prepared based upon KO's interpretation of RA's requirement package**
- **Defines the Government's needs**
- **Contains everything the bidder/offeror needs to know to be able to provide prices to the Government**
- **Awarded contract will "mirror" solicitation**

CONTRACTING

(CONTRACTING OFFICE)

Evaluation of Bids/Offers IAW

- **Solicitation terms;**
- **Laws,**
- **Regulations; and**
- **Procedures appropriate to the type of contract and method of acquisition**

CONTRACTING

(CONTRACTING OFFICE)

Basic Acquisition Methods

- Simplified Acquisition Procedure (SAP)
  - Blanket Purchase Agreements (BPAs)
  - Impact Credit Card Users
- Sealed Bidding;
- Contracting by Negotiations

CONTRACTING

(CONTRACTING OFFICE)

Selection of Source

- **Determination of Responsibility**
  - **Past Performance**
  - **Financial Capabilities**
- **Award**

CONTRACT ADMINISTRATION
(Administrative Contracting Officer)

- **Assign or Retain Administration**
  - **Determination made by KO**
  - **May be another Agency or Another KO**
  - **Administrative Contracting Officer (ACO)**
- **Why Assign Administration**
  - **Closer to performance location**
  - **Need for specialized administration team**

CONTRACT ADMINISTRATION
(Administrative Contracting Officer)

Compliance with Delivery/Performance

- COR is responsible for ensuring compliance;
- The Quality Assurance Surveillance Plan is the COR's surveillance management tool;
- It may be:
  - Contract specific/driven
  - Mission driven
  - Based on available resources; or
  - Performance driven

CONTRACT ADMINISTRATION
(Administrative Contracting Office)

CONTRACT MODIFICATION

- Is used to change some term or condition of the contract
- Must be requested by COR
- Must be within the scope of the contract
- COR MAY NOT ALTER THE CONTRACT IN ANY WAY!

CONTRACT ADMINISTRATION
(Administrative Contracting Office)

- **Completion**
  - **Government (COR) accepts**
- **Payment**
  - **Final invoice – May be certified by COR**
- **Closeout**

Official Contract LANGUAGE & LAW

- ✓ The English Language prevails in U.S. Government contracts even if courtesy translations are provided.
- ✓ U.S. Law prevails in U.S. Government contracts.

LEARNING OBJECTIVES

- **Source of COR's authority**
- **How it's delegated**
- **Who has contractual authority?**

ACQUISITION AUTHORITY DELEGATION

Pages 14 -15

CONSTITUTION

PRESIDENT

SECRETARY OF DEFENSE

SECRETARY OF ARMY

HEAD OF CONTRACTING AGENCY

PRINCIPAL RESPONSIBLE FOR CONTRACTING

CONTRACTING OFFICER

CONTRACTING OFFICER'S REPRESENTATIVE

QUALITY ASSURANCE REPRESENTATIVE

CONTRACTING OFFICER'S MAY:

Page N/A

1. Designate Contracting Officer's Representatives (COR)s and designate Alternate CORs ; OR

2. Designate more than one COR for a single contract when necessary to ensure continuity of operations; OR

3. When the contract schedule provides for performance at more than 1 work site; & one COR cannot handle all worksites;

CONTRACTING OFFICER'S MAY

Page N/A

~~cont'd:~~

4. Appointment letters shall clearly identify all worksites for which each COR is responsible; *OR*

5. State that an alternate is authorized to act in the absence of the primary COR.

CAUTION

Page 226 COR Summary

- A COR will NOT be designated authority to make any contract Obligations or Changes affecting
  - PRICE
  - QUALITY
  - QUANTITY
  - DELIVERIES or
  - PERFORMANCE
- Require bi-lateral agreements and are

not covered by the Changes Clause.

COR MEMORANDUM OF DESIGNATION

As a minimum it will include:

1. Names of COR & Contracting Officer.
2. Contract Number.
3. Areas of Authority/Responsibility.
4. Specific Limitations on Authority.
5. Ethics and Standards of Conduct.
6. Notice of any alternates/assistants.
7. Requirement to acknowledge/accept.

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 17-19

Overview Chapter 3, Contract Agency Law

- **Chapter 3, Section A**
  - Define a contract
  - Identify & Understand the six Elements of a contract

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 20-21

Chapter 3, Section B – Agent, Agency,

Independent Contractor & Personal / Non-Personal Services

- Agent and Agency defined.
- Understand the Authority/Classification of the Agent
- Understand what is meant by Independent Contractor
- Understand the difference between Personal and Non-personal Services

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 22 - 23

- Chapter 3, Section C – Types of Authority
  - Understand the various types of authority,
  - Understand which are real authorities and which are not

LEARNING OBJECTIVES

Chapter 3, Sections A, B, C, & D

Pages 24 - 27

- Chapter 3, Section D – Unauthorized Commitments, Ratifications & Constructive Changes
  - Understand how Unauthorized Commitments occur
  - Understand what Ratification is and the ratification process
  - Understand how Constructive Changes occur and how they differ from unauthorized commitments
  - Understand the Constructive Change Doctrine

CONTRACT LAW

A Contract is:

- a mutually binding legal relationship
- between two or more parties,
- enforceable by law,
- obligating the seller to furnish the supplies or services(including construction) and the buyer to pay for them (CONSIDERATION).

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Pages 17-10

- OFFER
- ACCEPTANCE
- MUTUAL CONSIDERATION
- LEGAL/POSSIBLE OBJECTIVE
- COMPETENT PARTIES
- CLEAR TERMS/CONDITIONS

(All must be present to be legal and binding)

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Pages 17-18

OFFER means:

- a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Page 18

To be valid an offer must be:

- Intended as an offer
- Complete in essential terms
- Communicated to the offeree, as intended
- Clear and unambiguous

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Pages 17-18

OFFER

- **Responses to Invitation for Bids (IFBs – sealed bidding) are offers called "bids" or "sealed bids";**
- **Responses to Request for Proposals (RFPs - negotiation) are offers called proposals; and**
- **Responses to Request for Quotations (RFQs – simplified acquisition) are called "quotations" not offers.**

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

ACCEPTANCE is an expression of consent to the proposed offer.

- It must be:
  - *CLEAR - No Misunderstanding. One interpretation;*
  - *TIMELY - Must occur before the offer is revoked; and*
  - Must be in the *SAME TERMS* as offer ***(to avoid being a counter offer) (Offer/Counteroffer is not used in Sealed Bidding.)***

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

CONSIDERATION IS:

- The price bargained & paid for a promise. *(Something of value changes hands.)*
- It may consist of:
  - an act,
  - forbearance of an act,
  - or a return promise.
- To be valid consideration must be legally sufficient and
  - Mutual"

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

COMPENTENCY OF THE PARTIES.

- **All parties to a contract must have legal capacity to enter into a contract.**
- **Incompetent Parties Rule:**

  INFANCY – Under Majority

  INSANITY

  INTOXICATION

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

Page 18-19

LEGAL AND POSSIBLE

- If a contract objective is not Legal and Possible, it is not enforceable.
- When a contract objective is impossible to accomplish, the law will not uphold a default termination.
- Govt. cannot legally contract for anything contrary to law.

ESSENTIAL ELEMENTS OF A CONTRACT OR MODIFICATION

CLARITY OF TERMS

- Clear enough for the courts to conclude that a contract agreement was intended.
- Uncertainty concerning the OFFER, ACCEPTANCE & CONSIDERATION may render an agreement unenforceable.

AN AGENT

**Is a person authorized by another, the Principal,
To act on behalf of the Principal,
And subject to the control of the Principal**

GENERAL AGENT

- **Conducts a series of transactions for the principal;**
- **Has blanket authority; and**
- **Can do practically anything the principal can do.**
- **In the U.S. Government general or unlimited authority does not exist.**

SPECIAL AGENT

- **Is authorized only to conduct a single type of action not involving continuity of services; and**

- **Has limited authority to act.**

- **Contracting Officer and CORs are special agents of the Government.**

AGENCY

- Is the relationship existing between two parties, the
  Principal and the Agent;

- Is created when the principal authorizes the agent to
  act for them with third parties; and

- The agent agrees.

- Requires no special formalities to create; and

AGENCY

PRINCIPAL

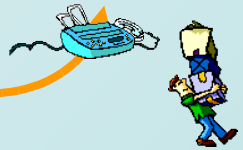
US GOVERNMENT

AGENT

CO/ACO/COR

3RD PARTY

INDEPENDENT CONTRACTOR



Privity of contract ?

INDEPENDENT CONTRACTOR

Is the 3rd party in Government contracting;

- **Is referred to as the "prime" contractor;**
- **exercises independent resources and judgment; and**
- **uses own methods to perform the work.**
- **is not an agent of the Government.**

AGENCY

PRINCIPAL

U.S. GOVT.

Agent

INDEPENDENT

CONTRACTOR

3RD PARTY

SUBCONTRACT

Privity of contract ?

SERVICE

PERSONAL S NONPERSONAL

Direct "Supervision" allowed

NO DIRECT SUPERVISION PERMITTED!

Shall Surveil IAW * contract terms

* In Accordance With

SERVICES

- **Personal Services Contracts SHALL NOT be awarded unless specifically authorized by statute.**

- **The statute is 5 U.S.C. 3109**

ACTUAL AUTHORITY

➢ ***Express(ed) Authority***

Generally an appointing document from the principal to an AGENT expressly defining the range of authority passed to the AGENT.

➢ ***Implied (Incidental) Authority***

Not expressly given to an agent, yet necessary to to accomplish the tasks assigned.

Limits of this incidental authority is defined as "usual",

APPARENT AUTHORITY

- **is not a Real Authority**
- **is created when the Principal acts, or fails to act, in a manner that allows another to appear to be their agent. This is called the Doctrine of Apparent Authority**

LIABILITY OF PRINCIPAL

- **Doctrine of Apparent Authority <u>does not</u> apply against the U.S. Government.**

- **Doctrine of Ratification – The Government may agree to be bound by unauthorized acts of it's agents.**

UNAUTHORIZED COMMITMENTS (UC)

- **Agent had no authority**
- **Mostly result from apparent authority.**
- **Have no relationship to a contract.**

RATIFICATION

- is the Adoption of an Unauthorized Act:
  - Principal accepts liability of act.
  - Liability retroactive to occurrence date.
- may be made when it is in the best interest of the Government; however, ratification is not automatic.

LIMITATIONS ON RATIFICATIONS (PARAPHASED)

At the time of occurrence:

- There must have been a legal mission or functional authority;
- Funds had to have been available; and
- The Government had to have received a benefit.

CONSTRUCTIVE CHANGES

- are unauthorized actions;
- generally resulting from apparent authority; BUT
- arise out of or are related to contracts;
- are generally settled under the “Disputes” clause of the contract; and
- are a major cause of contractor claims & mission impairment.
- Resolutions are reflected as modifications to the contract.

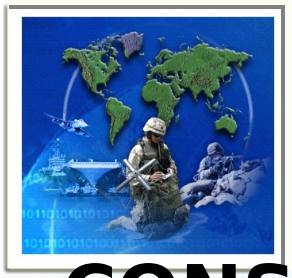
CONSTRUCTIVE CHANGE DOCTRINE

- was created by the ASBCA to:
  - establish policy;
  - avoid legal cases; and
  - avoid the perceived harshness of the “doctrine of apparent authority” rule.

NOT A CONSTRUCTIVE CHANGE

Suggestions; and

- **Voluntary Changes by the Contractor;**
- **Note: Although not constructive changes, suggestions and voluntary actions are difficult to isolate and generally should be avoided.**



EFFORTS TO AVOID CONSTRUCTIVE CHANGES

1. Special Clauses in the contract require the contractor to:

   - take direction from specific personnel; and
   - report unauthorized changes.

2. The CO provides a copy of the COR Letter of Designation to the Contractor.

3. The authority chain is discussed in the Post Award or Pre-Construction Conference.

ETHICS

- **Government and Contractor personnel must follow exemplary standards of conduct**

- **Numerous statutory and regulatory provisions prescribing stringent penalties for non-compliance exist.**

- **Government performs reviews of the Contractor's ethics program;**

  - **at the request of a customer or other Government official;**

  - **as part of a planned Performance**

GENERAL GUIDANCE AND POLICY

- **Ensure taxpayers' money is being spent appropriately;**
- **Detection of improper business practices such as false certifications, cost mischarging, defective pricing, kickback schemes or other fraudulent or criminal activity shall be reported to the Contracting Officer.**
- **The Contracting Officer shall report it to the Fraud Counsel or the Criminal Investigation Division (CID).**

INFORMATION ON A CRIMINAL INVESTIGATION

- Any knowledge of a criminal investigation shall be treated as sensitive and shared with other Government employees on a “need to know” basis.
- Investigations shall NOT be shared with Contractor personnel
- The liaison between Government employees and investigators is the Fraud Counsel. (CORs should report to the Contracting Officer)

INFORMATION ON A CRIMINAL INVESTIGATION
continued

CORS SHALL:

- Cooperate with investigators and legal counsel;
- Track significant costs associated with supporting the investigation; and
- Refer all requests for information from non- government sources to the Fraud counsel (thru the contracting officer); and
- Perform normal contract administration duties without interfering with

IMPROPER INFLUENCE ON GOVERNMENT DECISIONS

- **Decisions must be *Objective* in fact and appearance.**
- **Favoritism or other improper motives have no place in the award or administration of public contracts.**
- **It is a crime to offer or give a Government Official anything of value for or because of an official act (Bribery/Gratuities/Conflict of Interest)**
- ***Sec 18 USC 201-209 prescribes stringent penalties.***

- **General Prohibitions**

- **Outside Employment**

- **Executive Order 11222 – Section 201: Avoid actions that might result in or create the appearance of:**

1. Using public office for private gain;

2. Giving preferential treatment to any organization or person;

3. Impeding Govt. efficiency or economy;

4. Losing complete independence or impartiality of action;

5. Making Govt. decisions outside official channels;

Executive Order 11222 – Section 203:

No Direct or Indirect financial interests that conflict substantially with responsibilities and duties as Government employees.

Executive Order 11222 – Section 205

Employees SHALL NOT directly or indirectly use OFFICIAL INFORMATION, not made available to the general public, for furthering their own private interest.

PRODUCT SUBSTITUTION

Definition: Occurs when a contractor provides or attempts to provide nonconforming goods or services while billing for conforming goods or services. (Gov't must prove "intent".

- **Product substitution <u>is not</u> :**
  - a Government approved substitution
  - a Brand Name or Equal
- **Fraud:**
  -
  -

PRODUCT SUBSTITUTION

Pages 34

DOD POLICY ON PRODUCT SUBSTITUTION:

Reject all nonconforming goods and services and have the contractor replace or re-perform.

RESULTS OF PRODUCT SUBSTITUTION:

1. **Government doesn't receive that for which it is paying.**
2. **Mission degradation or failure.**
3. **Increases Life Cycle Costs.**
4. **Weakens the reliability of the supply system.**

PRODUCT SUBSTITUTION INDICATORS

- **Falsification of test results;**
- **Delivery of services at a lesser level than that called for in the contract; i.e.: less work, lower levels of skills/ technical knowledge;**
- **Delivery of reconditioned items when new items are required;**
- **(See textbook, page 34, paragraph 8 for additional indicators)**

CHAPTER 6,

DESCRIBING THE REQUIREMENT

LEARNING OBJECTIVES

- Understand the rationale behind Advance Acquisition Planning;
- Recognize the appropriate writing techniques, key words and phrases and writing style;
- Be able to explain the Rule of Ambiguity;
- Identify each type of Work Statement;

CHAPTER 6, DESCRIBING THE REQUIREMENT

The Work Statement:

- **is the heart of the contract;**
- **defines the needs of the Government in a contract situation; and**
- **states the intent of the contract in clear and concise terms.**

The Contracting Officer's Representative

- needs to understand the relevant laws, basic principles, general content of work descriptions and various types of work descriptions;
- is responsible for performance measurement on behalf of the Contracting Officer;
- documents any findings IAW the contract requirements, guidance provided by the KO, and statutory/regulatory requirements;
- and must read and understand the contract requirements for technical interpretation to the contractor on contract requirements and level of performance required by the contract; and

ADVANCE ACQUISITION PLANNING

- Means putting together a team that will develop the overall strategy for acquiring and managing the acquisition.
- **FAR 7.102 POLICY** paragraph a states "Agencies shall perform acquisition planning and conduct market research to promote and provide for;

  (1) Acquisition of commercial items, etc.;

  (2) Full and open competition.

- Paragraph b states Acquisition planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition.

CHAPTER 6, SECTION A
OVERVIEW AND IMPACT OF STATEMENTS OF WORK

Work Statements convey:

- WHAT
- WHEN
- WHERE
- QUANTITY
- QUALITY

STATEMENT OF WORK ELEMENTS

SCOPE:

BACKGROUND;

OBJECTIVE;

CONTRACTOR'S TASKS; and

CONTRACT END ITEMS;

WORK STATEMENTS

POLICY (FAR 11.002):

1. **Specify needs in a manner to promote full and open competition.**

2. **Avoid Restrictive Provisions/conditions that limit acceptable offers unless necessary to satisfy minimum needs/mission and are authorized by law.**

3. **Provide descriptions in terms of performance required or functions to be**

RELEVANT LAWS/REGULA

Metric Conversion Act of 19

… Requires each agency use the metric
System of measurements in its acquisition

Resource Conservation and Reco Act of 1976

…Establishes policy for procurement o
Products Containing recovered materials

WRITING TECHNIQUES, STYLE, KEY WORDS AND PHRASES

Pages 39-40

Why write well?

…Written records, reports, letter to cont
And other Government personnel, etc.

…Once contract is awarded the SOW bec
a legal, binding document.

…Different interpretations of the SOW ca
disagreements, poor relationships, performa
delays, and excess costs to the Government

…Government has to interpret the techn
Portion of the contract to the contractor.

WRITING TECHNIQUES, STYLE, KEY WORDS AND PHRASES

STYLE OF WRITING

…is the writer's method of assembling ideas in
…should be calm and subdued, free of emotion evoking statements.
…should be un-distracting, allowing the reader on the facts.

KEY WORDS AND PHRASES

…Use SHALL instead of Will in work statements
…Avoid use of "choice" words
…Keep pronouns to a minimum

PRIMARY RULES OF INTERPRETATIONS

Work Statement should be as specific as poss

- the Contracting Officer will determine the type
  and method of soliciting prices;

- it will allow the contractor to assess all the risks
  in performing the contract;

Words or phrases will be interpreted as is mo

**Work statement SHALL define those words th
Meanings or are not commonly used.**

PRIMARY RULES OF INTERPRETATIONS

RULE OF AMBIGUITY

Definition: More than one reasonable interpre
phase.

First part of rule: If ambiguous, courts will ru
drafter.

Second part of rule come from Court Decision
Patent Ambiguity Rule – Contracto
responsibility to clarify obvious ar
bid opening/ closing.

REMEMBER!!!!

- Readers interpret/define words & phrases based on their own experiences/needs.

- Contractors may be able to use the interpretation most favorable to them.

- PWS must be written to be interpreted the same way by contractor & the Government.

PES OF REQUIREMENT DESCRIPT

Manufacturing
Construction

COM
or
BO

Supply/Mfg

Services
Supply
Service
Construct

- DESIGN (DWS)
- PURCHASE (PD)
- PERFORMANCE (PWS)
- COMMERCIAL (CWS)

2nd Choice

1st Choice

"Any Mission, Anywhere!"

DESIGN WORK STATEMENT

- Used primarily for manufacturing or construction
- Provides Precise statements on:
  - How the work is to be performed;
  - Materials to be used;
  - Work Methods; and
  - Work Environment
- Contractor follows detailed steps outlined by the Gov't.
- Gov't must insure design will produce

PERFORMANCE WORK STATEMENT

States: WHAT shall be done not HOW it is to be done.

Describes: Output/Functions/Result.

1. Contractor responsible for results, not methods.

2. Contractor tells the Government how objectives will be met.

3. Gives contractor Flexibility

4. Descriptive/specific enough to Promote Competition & Protect the Government's interest.

5. The Contractor bears the RISKS associate with performance.

6. Contractor required to meet all contract

"Army Strong. Army Proud."

PURCHASE DESCRIPTIONS

- **GENERIC description of noncommercial end items.**

- **NONCOMMERCIAL ITEMS: Generally inspected during manufacturing process by the cognizant Contract Administration Organization (CAO)**

COMMERCIAL DESCRIPTIONS

FAR Defines Commercial Item as:

Any item, other than real property, that is of a type customarily used for non-governmental purposes and that has been offered for sale or sold, leased, or licensed to the general public.

See text book paragraph 4.a.(2) – 4.a (8) for further definition.

COMMERCIAL DESCRIPTIONS

FAR Part 12 – Acquisition of Commercial Items **Prescribes policies and procedures unique to the acquisition of commercial items.**

Implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA – Public Law 103-355)

Establishes acquisition policies more closely resembling those of the commercial marketplace.

Encourages the acquisition of commercial items and components.

CHAPTER 7
CONTRACT TYPE / KIND

- **A wide selection of Contract types is available to the Government.**
- **There are two broad categories of contract types:**
  - **Fixed-Price**
  - **Cost-Reimbursement**
- **There are two method of soliciting prices:**
  - **Sealed Bidding**
  - **Negotiation**

Firm-Fixed Price Contracts

- **Price remains firm**
- **Profit is included in the price**
- **Contractor is required to perform at the contract price**
- **Risk is on the Contractor**

Other types of Fixed Price Contracts

- FP with Economic Price Adjustment (FPEPA)
- FP Level of Effort (FFPLOE)
- Fixed-Price Incentive (FPI) Contracts

Indefinite Delivery Indefinite Quantity (IDIQ) Contracts

- Indefinite-Quantity
- Definite-Quantity
- Requirements

Cost-Reimbursement Contracts

- **Contractor is paid all costs that are <u>ALLOWABLE, ALLOCABLE</u>, and <u>REASONABLE.</u>**
- **Shifts the risk to the Government.**
- **Price varies with cost experience.**
- **Contractor is paid a fee not profit.**
- **Suitable for use ONLY when uncertainties regarding contract performance do not permit estimation of**

Other types of Cost-Reimbursement Contracts

- Cost Contracts
- Cost-Sharing Contracts(CS)
- Cost-Plus-Fixed-Fee Contracts (CPFF)
- Cost-Plus-Incentive-Fee Contracts (CPIF)
- Cost-Plus-Award-Fee Contracts (CPAF)

Time and Materials/Labor

Hours (TM/LH)

- **Used when it is not possible:**
  - **to accurately estimate the extent or duration of the work**
  - **To anticipate costs with a reasonable degree of confidence**
- **Acquire supplies/services based upon:**
  - **Direct labor hours**
  - **Materials at costs**

Does not provide a positive profit incentive to the contractor for cost

THREE KINDS OF CONTR

1. **SERVICE**

   Time & effort to perform an identifiable task.

2. **CONSTRUCTION**

   Construction, alteration & repair of real property.

3. **SUPPLY**

   Identifiable end item.

CHAPTER 8 GOVERNMENT FURNISHED PROPERTY (GFP) / MATERIAL(GFM)

Page 57 - 67

- Government Furnished Property (GFP)
- Government Furnished Material (GFM)
- Government Policy Regarding GFP & GFM
- Responsibilities of the Contracting Parties

POLICY:

- **Contractors are ordinarily required to furnish all property necessary to perform government contracts; UNLESS**

- **It is to the advantage of the Government to provide property or material**

Conditions when it may be advantageous to provide GFP/GFM

- Material not readily available on the commercial market;
- Necessary to get a standard or uniform end product;
- Cost would be less than the contractor had to pay;
- Expedite mission accomplishment; and

Examples of GFP:

- **Manufacturing Equipment, Generators, vehicles, office machines, furniture, computers, software, hydraulic lifts, test equipment, weapons systems, facilities**

Examples of GFM:

- **Components of tanks, weapons systems or helicopters, paint, paper, supplies, cleaning supplies, etc.**

RESPONSIBILITY for GFP/GFM:

- **Contracting Officer**
  - **Has overall contractual responsibility.**
  - **Ensures list of GFP/GFM is included in solicitation and contract**
  - **Ensures procedure for transferring GFP/GFM to the contractor is in the contract.**
  - **Appoints Property Administrator or delegate PA duties to the COR.**

RESPONSIBILITY for GFP/GFM:

- **Contractor**
  - **Accountable and responsible for security and maintenance of GFP used by the primary and subcontractor;**
  - **Develops and maintains a Property Control System;**
  - **Maintains official Property Control Records**

RESPONSIBILITY for GFP/GFM:

- **Contracting Officer's Representative (COR) who has been delegated property administrator duties;**
  - **Reviews Contractor's property control system;**
  - **Ensures property control system complies with FAR Part 45.5 and Government Property clauses; and**

CONTRACT ADMINISTRATION

OVERVIEW

- **involves those activities performed by government officials after a contract has been awarded.**
- **encompasses all dealings between the government and the contractor from the time the contract is awarded.**
- **constitutes that primary part of the procurement process that assure the government gets that for which it pays.**

CONTRACT ADMINISTRATION

- **Focus is on obtaining supplies, services and construction of requisite quality, on time, and within budget;**

- **Extent varies from contract to contract and can range from the minimum acceptance of a delivery and payment to the contractor;**

- **Starts with developing clear, concise, performance based statements of work and developing a contract administration plan or QASP; and**

CONTRACT ADMINISTRATION WEAKNESSES:

1. **More time allocated to awarding contracts than administering them may lead to:**
   - **Poor contractor performance**
   - **Cost overruns;**
   - **Delays in receiving goods and services**
2. **Improperly trained officials performing contract oversight; and**
3. **Unclear statements of work that hinder contractor performance.**

ORGANIZATION AND RESPONSIBILITIES

Cooperation and Leadership

(1)Understand what is involved in the Administration of Installation Level Service Contracts

(2)Remember administration is a multi-disciplined process. Success depends on communications and cooperation.

(3)The Contracting Officer must actively administer the contract.

(4)The Contracting Officer determines whether or not to assign the

DFARS 201.602-2 RESPONSIBILITIES:

- **Gives the KO the authority to designate authorize representatives.**
- **Stipulates the qualifications of the COR**
- **Identifies the limitations on the COR's authority as that which the Contracting Officer delegates.**
- **Stipulates the COR may not re-delegate his contractual authority.**
- **Requires the COR maintain a file for each contract assigned.**

POST-AWARD CONFERENCE

1. Is held to ensure Government and Contractor have a clear and mutual understanding of all contractual requirements and obligations;

2. Need for a post-award conference is determined by the KO.

3. Is always conducted prior to the contractor beginning contract performance;

4. Is conducted by the KO (unless delegated to the ACO or COR);

ORGANIZATION OF CONTRACT ADMINISTRATION TEAM

1. NO ONE PERSON CAN PERFORM ADMINISTRATIION ALONE

2. REQUIRES INTEGRATAED TEAM APPROACH

3. NO ONE STANDARD WAY TO ORGANIZE

4. EMPHASIZE NEED FOR COOPERATION BETWEEN KO AND FUNCTIONAL PERSONNEL

5. GREATEST DRIVER IS THE COMPLEXITY OF THE TECHNICAL REQUIREMENTS.

CONTRACT ADMINISTRATION TEAM

Pages 71-72

(RESPONSIBILITIES)

- **Contracting Officer (KO, ACO, TCO)**
- **Contract Specialist**
- **Contracting Officer's Representative (COR)**
- **Quality Assurance Representative (QAR)**
- **Other Interested Parties**
  - ✓ **Legal Counsel**
  - ✓ **Program Manager**
  - ✓ **Project Officers**
  - ✓ **Safety, Security, &**

UNIFORM CONTRACT FORMAT

TABLE OF CONTENTS FOR SERVICES

Part I - The Schedule

- A Solicitation/Contract Forms
- B Supplies/Services & Prices/Costs
- C Description/SOW
- D Packaging & Marking
- E Inspection & Acceptance
- F Deliveries or Performance
- G Contract Administration Data
- H Special Contract Requirements

Part II - Contract Clauses

- I Contract Clauses

Part III - List of Documents, Exhibits & Other Attachments

- J List of Attachments

Part IV - Representations & Instructions

- **K Representations, Certifications and Other Statement of offerors**
- **L Instructions, Conditions, and Notices to Offerors**
- **M Evaluation Factors for Award**

CHAPTER 11, PERFORMING QUALITY ASSURANCE

1. Understand the principles of Quality Management
2. Explain uses of the Quality Control Plan (QCP)
3. Explain uses of the Quality Assurance Surveillance Plan (QASP)
4. Understand the CORs responsibilities regarding the QCP and the QASP

PERFORMANCE SURVEILLANCE

Definition

Performance surveillance is:

… a function of contract administration;

… used to determine contractor progress; and

… identify factors that may delay performance;

Performance surveillance involves:

…Government review and analysis of Contractor performance plans, schedules, controls, and industrial process; and

OBJECTIVE OF SURVEILLANCE:

-- Is to monitor contractor performance to ensure c
the terms and conditions of the contract.

Surveillance plans shall be developed to acc

1. Provide a guide to effectively monitor a contract

2. Outline the corrective procedures to be taken f
performance; and

3. Provide a means for the Contracting Officer to
performance of the Government CORs, QARs, an
monitoring contractor performance.

DEFINITIONS

PATENT DEFECTS are defects that are obvious under "normal inspection".

Defects noted at time of Delivery / Acceptance are generally rejected. The Government may take other actions permitted by inspection clause.

LATENT DEFECTS are defects that are hidden under "normal inspection".

Defects *not visible* at the time of delivery/performance are subject to the corrective actions defined in the inspection clause.

DEFINITIONS continued

Pages 79-80

ACCEPTANCE by a Government representative is generally conclusive and final UNLESS one of the following conditions apply:

- **Latent Defect,**
- **Fraud by Contractor,**
- **Gross Mistakes amounting to fraud,**
- **Any other rights the Government is entitled to under the guarantee or warranty provisions of the contract**

RESPONSIBILITIES for QUALITY ASSURANCE

- **COR has the responsibility to:**
  - **Ensure compliance with the technical terms and conditions of the contract**
  - **Ensure there is a plan in place to perform surveillance**
  - **Ensure any assistants (QARs/Inspectors) understand and perform surveillance in accordance with the plan.**

QARs are responsible for;

- **Monitoring the contract in accordance with the QASP; documenting the observations;**

RESPONSIBILITIES for QUALITY ASSURANCE

continued

- **QARs are responsible for;**
  - **Maintaining technical competency; and**
  - **Obtaining/maintaining proficiency in surveillance.**

QARs best attributes are technical expertise and common sense logic.

- **QARs must be fair, impartial and consistent.**

RESPONSIBILITIES for QUALITY ASSURANCE

continued

- **QARs are not permitted to:**
  - **Interpret any terms of the contract;**
  - **Approve deliveries/performance or certify invoices; or**
  - **Take corrective action with the contractor.**

QUALITY MANAGEMENT

- **Traditional Quality Management Systems focused on identification and control on non-conforming performance**

- **Traditional approach to preventing nonconforming material/ construction/services suffers drawbacks such as:**

  - **Identification and control of defects more costly than prevention of them in the first place; and**

- **Often even 100% inspection fails to**

QUALITY MANAGEMENT

- **Contractor is required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government IAW FAR Part 46.105(b).**

- **ISO 9000 series Quality Management Program preferred by the US Government and often its use was mandated by the US Government**

SECDEF memo dated 29 June 1994 encourages use of commercial practices and requires contractors to be given flexibility to identify their own systems.

- **This type of system relies on assessment of the contractor's own quality management process**

QUALITY MANAGEMENT

- **Benefits of an effective quality management program include:**
  - **First time pass quality;**
  - **Decreased cycle time or performance time;**
  - **Reduction in rework, engineering changes, and inspections;**
  - **Improved affordability and reduced risk.**

QUALITY MANAGEMENT Pages 81-92

- **OVERSIGHT:**
- **Contractor are responsible for the quality of their products or services.**
- **FAR 46.105(c) states:**

"The control of quality by the contractor may relate to, but is not limited to:

(1) manufacturing processes;
(2) drawings, specifications and engineering changes;
(3) Testing and examination;
(4) reliability and maintainability assessment;
(5) fabrication and delivery of products;
(6) technical procedures and processes for services;
(7) preservation, packaging, packing and marking; and
(8) procedures and processes for services.

QUALITY MANAGEMENT Pages 81-82

- **POLICY CHANGE:**

- **June 1995 DFARS 246.102 Policy was changed to require the Government to:**

  - **Develop and maintain a cost effective quality management program;**

  - **Conduct quality audits to ensure the quality of products and services meet contractual requirements;**

  - **Base the type and extent of government contract quality assurance on the particular acquisition; and**

  - **Provide contractors with the maximum**

QUALITY MANAGEMENT

- **Application and Use of Commercial Quality Standards**
  - **Contractor's ability to satisfy the quality management system objectives should be assessed in source selection and continuously monitored after contract award.**
  - **Reviews of contractor quality management systems should place emphasis on management responsibility, supplier control, corrective and preventative action and internal audit.**

IMPLEMENTING EFFECTIVE & EFFICIENT SURVEILLLANCE

- **COR verifies the contractor has a quality system that meets contract quality requirements allowing the COR to:**
  - **Identify critical processes**
  - **Develop and maintain a written risk based surveillance plan**
  - **Performs necessary surveillance**
  - **Performs data analyses and adjusts surveillance accordingly.**
- **COR upon contractor non-conformance:**
  - **Requests, evaluates, and verifies contractor corrective actions.**
  - **Encourages contractor to self audit, pursue process**

DEFICIENCY REPORTING

- As part of the QASP, CORs/QARs should establish a product/service deficiency reporting and correction system to:
  - track and record status of performance; and
  - provide feedbacks to the requiring activity and the contracting officer.
- The Contractor should implement a system in his Quality Control Plan that identifies the root cause of defects and corrective actions.

INSPECTION CLAUSES

- **Different inspection clause for each type of contract.**
- **Each inspection clause requires the contractor to "provide and maintain an inspection system acceptable to the Government**
- **Each Inspection clause gives the Government the authority to inspect.**
- **Each inspection clause prescribes remedies in case of deficient performance by the contractor**

RESPONSIBILITY FOR INSPECTION

- **Contractor is responsible for Quality Control.**
  - **Maintains an inspection system acceptable to the Government and is commonly known as the Quality Control Plan (QCP)**
- **Government is responsible for Quality Assurance.**
  - **The inspection efforts taken by the Government to ensure performance meets contract requirements is known as Quality Assurance.**

INSPECTION of SERVICES – FIXED PRICE

- **Para (b) Contractor shall provide and maintain an inspection system acceptable to the Government. This is commonly known as the Quality Control Plan (QCP)**
- **Para (c) The Government has the right to inspect and test all services whenever they deem necessary as long as we do not unduly delay the contractor's work.**
- **Para (d) Contractor shall provide all reasonable facilities and assistance for the safe and convenient performance of the contract requirements "at no additional cost to the Government".**

INSPECTION of SERVICES – FIXED PRICE

- **Paragraphs (e & f) These are four remedies in case of deficient performance. They are:**

  1. Re-perform at no additional cost to the Government;

  2. Require the contractor to take necessary actions to ensure future conformance and reduce the contract price to reflect reduced value of services received.

  3. By contract or otherwise perform and charge the cost to the contractor; or

  4. Terminate the contract for default

INSPECTION of SERVICES – COST REIMBURSEMENT

- **Paras (b & c) Same as Inspection of Services – Fixed Price.**
- **Paras (d & e) Under Cost Reimbursement Contracts we reduce the fee. The contractor gets paid for re-performing the work, but the fee is reduced to reflect the reduced value of services received.**

INSPECTION TIME-and-MATERIAL and LABOR HOUR

- **Paras (b & c): Same as Inspection of Services – Fixed Price.**
- **Paras (d): Furnishing facilities and assistance for inspection.**
- **Para (e): Constructive Acceptance**
- **Paras (f, g & h): Remedies**

TOTAL INSPECTION/100%

Save for *CRITICAL* services performed *infrequently*

Health
Safety
Security

VALIDATED CUSTOMER COMPLAINTS

1. Not usually a primary method of inspection but a valuable supplement more systematic methods.
2. A means of documenting certain kinds of service problems using a Customer Complaint Record.
3. COR validates, takes appropriate actions and documents the file and provides feedback.
4. This method is seldom used to reject services or deduct money from the contractor.
5. The way to get & document customer complaints must be carefully planned in the QASP.
6. An operating instruction must be developed and given to each using organization along with a briefing on how to use the program.

RANDOM SAMPLING

- **Is a statistically based sampling method. The Government evaluates only a portion of the total performance.**
  - **It is the most efficient method to inspect a large quantity of non-critical tasks performed frequently.**
  - **It is the most appropriate method for recurring tasks.**
  - **Computer Programs exist to assist in establishing sampling procedures.**
  - **Contractor does not know which outputs will be monitored.**

- **Statistical process means:**

  . Each output in the lot must have an equal change to be selected every time a sample is drawn; and

  . No one selection in the output can in any way affect the selection of another output.

PERIODIC INSPECTION Or PLANNED SAMPLING

1. Evaluation of tasks selected on other than 100% basis; 100% not required nor practicable.

2. Predetermined plan established using subjective criteria and analysis of agency resources;

3. Determination of outputs to be observed is based on subjective criteria established in the QASP.

4. Preferred method of inspections for those items not listed on the

MANAGEMENT INFORMATION SYSTEMS (MIS)

1. **MIS is an inspection method where reports are used to determine if the performance is defective or non-defective.**

2. **MIS can collect information of performance values which can be used instead of random sampling data.**

3. **MIS usually collect data for 100% of the time for a specified period of time.**

4. **MIS may corroborate results found in other methods of monitoring or evidence new trends and/or weaknesses.**

Q = QUALITY
A = ASSURANCE
S = SURVEILLANCE
P = PLAN

--- Guide describing monitoring methods i
--- Specifies how quality assurance survei
--- Provides the method to determine if th
performance standards in the PWS
--- Includes a surveillance schedule
--- States surveillance methods to be usec
--- Focus on the quality, quantity, and tim
--- NOT on the steps required or procedur

QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

Development of the QASP

- Is in conjunction with the performance work statement (PWS);
- QASP and the PWS can be one document.
- Select most appropriate surveillance selected method, considering:
  - Task criticality; Task lot size; Surveillance period;
  - Availability of Quality Assurance Representatives (QAR);

DFARS 246.102 POLICY

Pages 93-94

requires the Government to:

1. **Develop and manage a cost effective quality program to ensure contract performance conforms to specified requirements;**
2. **Conduct quality audits to ensure quality of products and services meet contractual requirements;**
3. **Base the QASP on the specific requirements; and**
4. **Provide contractor maximum flexibility**

QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

- **Designed to aid the COR with an EFFECTIVE and SYSTEMATIC Surveillance methodology.**

- **Objective is to evaluate contractor's performance**

- **Looking for results not details on how work was performed**

- **Contains sampling guides, checklist, tables and charts needed to document monitoring each required service listed on Performance Requirements Summary (PRS) chart**

QASP FORMAT

- **Introduction**
  - Purpose
    - Functions Surveyed
- **How to Use**
  - Schedulling
    - Sampling Procedures
      - Inspection Procedures
        - Documentation & Reporting
- **Surveillance Forms**
  - Sampling Guide
    - Tally Checklist
      - Surveillance Activity Checklist
        - Customer Complaint Record
          - Contract Discrepancy Report
- **Annexes**
  - PRS Chart
    - Table of Inspection - Sample Sizes
      - Inspection Sampling Plans
        - Random Numbers Tables

PERFORMANCE REQUIREMENTS SUMMARY (PRS)

Pages 95-95

The (PRS) is a detailed outline, in chart format of the PWS, listing the Major Tasks.

1. Key Required Services; (Column 1 – SOW Task)

2. Paragraph Number of Key Service: (Column 2)

3. Expected Standards; (Column 3)

4. Acceptable Quality Level (AQL) (Column 4)(May also contain lot size, sample size, and accept/reject numbers)

5. Planned Method of Surveillance; and (Column 5)

6. Value of the task or total contract price

The STANDARD

(found in Column 3 of PRS Chart)is a measure of comparison; an acceptability criterion; a yardstick.

- **It is compared against contractor output to measure acceptability and is composed of two parts:**

  - **a *Timeliness* criterion &**
  - **a *Quality* criterion.**

- **Standard may be derived from: Directives regulating the service; Agency standards; or Work location standards.**

ACCEPTABLE QUALITY LEVEL

The AQL (found in Colum 4 of PRS Chart) is the:

- **the Degree to which Govt. will allow performance to vary from standard.**
- **established by the PWS Writer using the AQLs listed in MIL-STD-105E.**
- **one of the keys to unlocking the accept / reject level in Random Sampling**

MINIMUM ACCEPTABLE STANDARDS (MASs): AFARS, Appendix BB, Installation Support Services Contract Administration, dated June 1, 1996 stated that "the surveillance plan should refer to minimum

The QASP Derives from 3 KEY ideas:

1. Management by Exception,

2. Performance Indicator, *and*

MANAGEMENT BY EXCEPTION

….Satisfactory performance of the output as specified in the contract normally indicates the contractor is using satisfactory quality control procedures.

….Government is concerned with the contractor's procedures only when services are NOT adequately performed.

PERFORMANCE INDICATORS

Pages 96-97

… With an associated performance standard and specified quality requirements is the measurement yardstick.

….A performance indicator is a characteristic of a work process output that can be measured. It may measure either, or both <u>QUANTITY</u> & <u>QUALITY</u>.

….a performance value is a characteristic of an output that can be measured.

….Performance indicators should be realistic. There are five types as follows;

PERFORMANCE INDICATORS

1. **Quantitative**

is a measure of work actually done.

2. **Qualitative**

is a measure of *How Well* outputs are produced against a standard.

PERFORMANCE INDICATORS

3. Timeliness

is a measure of average elapsed time to do a work unit compared to a requirement.

4. Effectiveness

is a m**easure of mission performance.**

5. Costs

are an indirect measure of performance when

PROBLEM LOCATION

….When performance values show the service is not adequately performed, the COR uses decision tables to locate the problems/causes.

….The tables provide a logical sequence to find a problem cause. They are a set of pointers to find a problem's source step-by-step.

DEFINITIONS USED IN CASE STUDY

Pages 98-100

1. Accept and Reject Numbers
2. Batch / Lot
3. Degree of Sampling
4. Level of Inspection
5. Percent of Sample found defective.
6. Population
7. Sample
8. Sample Size
9. Sample Size Code Letter
10. Types of Sampling

CHAPTER 11, SECTION D
USING THE SURVEILLANCE PLAN

- How to build a monthly schedule;
- How to use the surveillance plan; and
- What to do when there is poor contractor performance

SURVEILLANCE PLAN SCHEDULE

(Monthly Schedule for Activities)

Why develop Surveillance Plan Schedule?

- **To specify when and what surveillance is required for a specific contract.**
- **To facilitate use by the COR/QAR in performing inspections.**

What does the surveillance plan include?

- **Scheduling, observing, documenting, accepting, and determining payment due.**

SURVEILLANCE PLAN SCHEDULE

(Monthly Schedule for Activities)

- COR's responsibility to develop a monthly schedule for activities based upon the QASP's requirements;

- Schedule must be completed by the last workday of the preceding month.

- Schedule will cover all areas considered essential to accurately monitor contractor

(Monthly Schedule for Activities)

continued

Monthly Schedule should be reviewed to ensure all requirements for inspection are captured.

Daily schedules shall include enough sheets for each day of the month.

The number of observations to be made during the rating period shall be indicated at the bottom of the schedule.

The sampling guide (used with Random Sampling) shall be referred to for each service being monitored.

(Monthly Schedule for Activities) continued

- Completed monthly schedule shall be marked FOR OFFICIAL USE ONLY
- Distribution shall be made as appropriate
- Changes are posted as they occur.
- Actual surveillance recorded must be comparable to the monthly schedule and show an audit trail that permits tracking to any COR/QAR actions

SAMPLING PROCEDURES

Sampling is a process where:

- **a portion of a defined population or lot is tested or examined.**
- **after completion of inspection/testing a determination of the quality of sampled units is made.**
- **and assessment is made to determine whether the quality of sampled units is equal to the quality of the entire population**

Criteria used to determine which outputs

RANDOM SAMPLING METHOD

If the Random sampling method is used:

- A Record must be kept of random numbers selected and how they were associated with the outputs to be observed
- Sampling must be truly random and to determine this two circumstances must exist.
- Improper or inaccurate random sampling could render remedial action against the contractor unenforceable

RANDOM SAMPLING continued

To Initiate Sampling Process:

1. Compile the Lot size
2. Then number each item in the lot consecutively
3. Use Sample Size Charts to determine how many to be sampled
4. Then select actual outputs to be observed.

INSPECTION PROCEDURES

- **Inspection procedure of the QASP is a brief explanation of the requirements and tells the evaluator what should be checked during the inspection.**
- **Inspection can be accomplished by:**
  - **Watching actual task performance;**
  - **Checking an attribute of the completed task; or**
  - **Using management information reports.**

DOCUMENTATION OF INSPECTION

- **Tally Checklist**
  - **Record information on the samples;**
  - **Record the results of the observations or inspections.**
- **Surveillance Activity Checklist**
  - **Documents unsatisfactory contractor performance;**
  - **Contractor required to initial the documentation of unsatisfactory performance**

DOCUMENTATION OF INSPECTION

continued

- **Contract Discrepancy Report (CDR)**
  - **Completed when unsatisfactory performance is documented;**
  - **Contractor required to sign the CDR.**
- **Surveillance Certification Letter**
  - **Documents inspections for previous month;**
  - **Must be completed no later than 5th day of the month**
  - **Must document any missed inspections**

ADDITIONAL SURVEILLANCE TERMS

- **Reduced Surveillance – decreases sample size**
  - **Based upon contractor's documented good performance;**
  - **Puts more risk on the Government.**
- **Performance Requirement**
  - **AQL is the maximum percentage of defects allowed in the random sample before the Gov't will reject the lot.**
  - **AQL must be listed in MIL-STD-105/E**
- **Contract Deduction Formula (Fixed-Price)**
  - **Used with Random Sampling and/or 100% Inspection**

SURVEILLANCE FORMS

Pages 106-110

- **Sampling Plan**
  - **Used in QASP to show what information is needed to sample performance; and**
  - **Is required for each task listed on the performance requirements summary.**
- **Sampling Procedure**
- **Requires Inspection Tables;**
- **Tally Checklists;**
- **Surveillance Activity Checklists;**
- **Customer Complaint Record; and**
- **Decision Tables.**

ADDITIONAL SURVEILLANCE FORMS

- **Inspection of Non-Performance Requirements Summary (PRS) Items:**
  - **Gov't still retains the right to inspect;**
  - **Inspect in same manner as "Periodic" surveillance items;**
  - **Non-PRS items should be listed in QASP; and**
  - **Remember there was a reason these were not put in the PRS Chart – (Inspections costs outweigh the costs of the task)**

CONTRACT DISCREPANCY REPORT

COR/QAR Documents unsatisfactory contractor performance.

Documentation Shall Include:

- Description of deficiency,
- Contractor's Response on cause,
- Contractor's corrective action plan,
- Government evaluation of plan,
- Government corrective actions.

CONTRACT SURVEILLANCE REFER

Defense Acquisition Deskbook (DAD)
FAR 46.4, Quality Assurance
DFARS 246.4, Government Contract
DFARS 246.6 & App F, Material Inspe
AFARS 46.4 Quality Assurance
AFARS 46.7 Warranties

Chapter 11, Section E: Past Performance Information

SURVEILLANCE DOCUMENTATION

- Inspections are documented and filed for:
  - Reference;
  - Audit,
  - Proof of inspection
- Documentation must contain as a minimum:
  - (See Paragraph 1.b. – page 111)
- Documentation is an integral part of final contract file:
  - Must be stored and maintained
  - COR may keep additional copy for historical data

Chapter 11, Section E: Past Performance Information

CPARS: Contractor Performance Assessment Reporting Structure

- **Regulatory Requirement:**
  - **FAR 42.1502 – Agencies shall prepare an Evaluation of Contractor Performance.**
  - **FAR 15.304 - Past Performance shall be evaluated in all source selection for negotiated competitive acquisitions**
- **Acquisition Regulation Supplements**
  - **Army: AFARS 5142.1502-90 Policy**
  - **Air Force: AFFARS 5342.1503 & 5315.305, AF Past Performance Evaluation Guide**
  - **NMMCARS 5242.15 & 5215.305**

Chapter 11, Section E: Past Performance Information

Pages 113

CPARS REPORTING THRESHOLDS:

Business Sector	Dollar Thresholds
Systems	> $5,000,000
Ship Repair and Overhaul	> $500,000
Services	> $1,000,000
Health Care	> $100,000
Operations Support	> $5,000,000
Fuels	> $100,000
Information Technology	> $1,000,000

May choose to have write a CPAR on contracts below these thresholds

Chapter 11, Section E: Past Performance Information

CPARS REPORTING IS NOT REQUIRED FOR:

ARCHITECT-ENGINEERING SERVICES
(entered into Architect – Engineer Contract Administration Support System (ACASS)

CONSTRUCTION (entered in CCASS)
Construction Contractor Appraisal Support System (CCASS

SPACE & TECHNOLOGY
(National Aeronautics and Space Administration (NASA) Past Performance Data Base (PPDB)

Chapter 11, Section E: Past Performance Information

1. The CPAR is initiated by the focal point.

2. Assessing Official (COR) input into this evaluation is critical.

3. Assessing official must validate proposed ratings prior to sending to the contractor. There must be sufficient documentation in the file to support your proposed ratings. Ratings must be FACTUAL, SUPPORTABLE, & WELL-WRITTEN.

4. Contractor has 30 days to review CPAR & provide any comments.

5. Contractor must protect the CPAR as “Source Selection Information”.

Chapter 11, Section E: Past Performance Information

(CPARS)

Contractor Performance Assessment Reporting System

TRAINING:

1. CPARS Training: Available various locations in Germany. For information contact Ms. Angelike Moshammer, DSN 375-3213 or Commercial 0621-487-3213.

2. CPARS WEB Based (on-line) Training is located at:

   http://www.cpars.navy.mil/allapps/cpartrng/webtrain/webtrain_cpars.htm

RELEASE OF INFORMATION

- Secure Documents
- Source Selection Inform
- Contractor Proprietary

HANDLE WITH CARE

CHAPTER 12, MODIFICATIONS LEARNING OBJECTIVES

1. **Be able to recognize the difference between uni-lateral and bi-lateral modifications.**

2. **Understand what a change order is.**

3. **Know who does and does have the authority to issue a modification.**

CHAPTER 12, MODIFICATIONS
INTRODUCTION

- **Ability to modify contract essential**
- **COR's Responsibility**
  - **Ensure timely implementation of modifications by the contractor; and**
  - **Document the effective dates, required delivery or performance periods and the date the modified performance began.**

CHAPTER 12, MODIFICATIONS

A MODIFICATION is any written change to the Contract and may be:

- **An Administrative Change**
- **A Change Order**
- **Supplemental Agreement**

- **Effective Dates**
  - **Solicitation Amendment**
  - **Change Order**
  - **Administrative Change**
  - **Supplemental Agreement**

AUTHORITY

<u>Only</u> the Contracting Officer, acting within the scope of their authority are empowered to execute contract modifications.

CHAPTER 12, MODIFICATIONS

TYPES OF MODIFICATIONS

1. Uni-lateral Modification

- **Issued solely at the discretion of the Governm**
- **Used for:**
  - **Administrative Changes**
  - **Change Orders (within the scope of the con**
  - **Terminations**
  - **Exercise of Options**

2. Bi-lateral Modification

- **Agreed to and signed by both parties;**
- **Supplemental Agreement is a bilateral modific**

CHAPTER 12, MODIFICATIONS

REGULATORY GUIDANCE-CHANGES:

- FAR Clause 52.243-7, Notification of Changes requires the Contractor to notify the Government promptly of any alleged change the contractor considers a change to the contract and specifies the responsibilities of the contractor and the Government with respect to such notification.

CHAPTER 12, MODIFICATIONS

CHANGES - Contractor's Responsibility:

- Contractor shall notify:
  - the Contracting Officer, in writing as soon as possible, when he considers the Government has made a change in the contract that has not been identified as a change.

CHAPTER 12, MODIFICATIONS

Government's Responsibility:

- The Government will evaluate the alleged change and has the responsibility to:
  - confirm that it is a change, direct the contractor on how to perform and plan for funding; or
  - countermand the alleged change;
  - or notify the contractor that no change is considered to have occurred.

CHAPTER 12, MODIFICATIONS

Pages 116-117

CHANGES CLAUSE

1. **Permits the Contracting Officer to make unilateral changes, in designated areas, WITHIN THE GENERAL SCOPE OF THE CONTRACT.**

2. **Changes may be made "at any time" before termination of of the contract.**

3. **Contractor must continue performance unless an exception applies such as in cost-reimbursement contract.**

CHAPTER 12, MODIFICATIONS

Pages 117-118

CARDINAL CHANGE

1. **No precise definition of “outside the scope of the contract”.**

2. **Consensus is that a “cardinal change” – outside the scope of the contract – occurs when the Government effectively requires the contractor to perform duties materially different from those for which they originally bargained.**

3. **No definite rules on determining when a change is “Cardinal”. Each case determined on it’s own particular setting.**

CHAPTER 12, MODIFICATIONS

Contractor's Duty:

4. If "cardinal" change is ordered the contractor has no duty to follow it and may stop performance – HOWEVER; most contractors will continue because:

   …. they know they will get an equitable adjustment; or

   … because they fear the change order is valid and a default termination would be upheld for failure to perform.

CHAPTER 12, MODIFICATIONS

5. A supplemental agreement outside the scope of the contract is generally considered a new procurement and must comply with with the rules regarding competition.

6. A change beyond the scope of the contract is a breach of contract and entitles the contractor to damages.

CHAPTER 12, MODIFICATIONS

EQUITABLE ADJUSTMENT

1. Equitable adjustment provision provides for flexibility.

   a. Allows Gov't to order a change without the extra time and expense of awarding a new contract.

   b. Indicates what may be adjusted and how the adjustments may occur.

   c. Burden of proof for the equitable adjustment rests on the

CHAPTER 12, MODIFICATIONS

3. Contractor has 30 days to assert their claim.

4. Contracting Officer has discretion to receive and act on any claim made prior to final payment of contract.

5. If the contractor and the Government are unable to agree on an equitable adjustment, then the disagreement shall be considered a dispute and resolved

CONFLICT RESOLUTION

1. Partnering
2. Ombudsman
3. Alternate Disputes Resolution
4. Protests (Before/After Award)
5. Claims
6. Disputes

CONFLICT RESOLUTION

- Traditionally resolution of disputes was by claims and litigation.
- Disagreements arise from multitude of reasons.
- Contractor submits claim.
- Contracting Officer renders a Final Decision.
- Agreements reached are reflected as modifications to the contract.
- No agreement – Contractor has option to pursue by:

....An Appeal to Armed Services Board of Contract Appeals;

.... U.S. Claims Court; or

....One of the Alternative Disputes Resolution available.

CONFLICT RESOLUTION PARTNERING

Pages 121-122

Potential benefit to CORs:

1. Technique for preventing disputes;
2. Creates a partnership agreement signed by all parties;
3. Achieves improved cost, schedule and performance goals;
4. Improves relationships and communication between Government and Industry; and
5. Can expect results such as more timely performance, better cost control, significant reductions in paperwork, and fewer disputes.
6. And can transform an adversarial relationship into a professional relationship.

CONFLICT RESOLUTION OMBUDSMAN

- **Helps parties resolve problems on existing contracts;**
- **Investigates reported complaints or requests for assistance from Industry;**
- **Issues nonbinding reports and recommendations;**
- **Contributes to an increased level of sensitivity in the command for handling contractor problems.**

CONFLICT RESOLUTION

Page 122-123

ALTERNATE DISPUTES RESOLUTION (ADR)

FAR 33.204 Policy

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR

CONFLICT RESOLUTION

Pages122-123

Alternate Disputes Resolution (ADR)

- Voluntary Procedures to resolve controversies without Resorting to litigation
- Effective and inexpensive method
- No single correct method
- Army established acquisition reform-working group that meets with industry
- Model ADR Agreements drafted by several

CONFLICT RESOLUTION

Common Features of ADR Techniques

- Negotiation assistance by third party
- Third party is neutral
- Focus on interests
- Alternatives are developed

EXECUTIVE

JUDICIAL

LEGISLATIVE

SUPREME COURT

CONGRESS

PRESIDENT

90 Days

APPEALS COURT

210 Days

60 Days

GAO

DOD

SERVICE

ASBCA

CLAIMS COURT

HCA

90 Days

12 Months

Solicitation Terms, or Contract Award

KO's FINAL DECISION

60 Days

CLAIM

PL 85-804

EXTRAORDINARY RELIEF

DISPUTES PROCESS

PROTEST PROCESS

"Any Mission, Anywhere!"

TERMINATIONS

Notes 124-130

1. By COMPLETION

1. By OPERATION OF LAW
2. By MUTUAL AGREEMENT
3. Under Gratuities Clause
4. T for CONVENIENCE
5. T for DEFAULT(LAST RESORT!)

TERMINATIONS

1. **By COMPLETION**

   Contractor completes – Governme

2. **By OPERATION OF LAW**

   When Government excuses the Co from performing under the Contract reason that is beyond the control of or the Government

TERMINATIONS continued

3. By MUTUAL AGREEMENT

Neither party has a financial obl
perform.

4. T for Gratuities

Contractor has “offered” or “giv
To a Government employee.

TERMINATIONS continued

5. TERMINATION FOR CONVENIENCE (T4
when it is in best Interest of the Gov

- Is unique to Government contracting;
- Mandatory clause for T 4 C with full forc
  effect of law; and
- Specific clauses for different contract typ
- May terminate in whole or part of a contra

TERMINATIONS conti

Pages 125-126

- Examples when it is in the “best interest of the
  - Technological breakthrough.
  - The requirement no longer exists.
  - Cessation of Hostilities.
  - Item has become obsolete.
  - Funding cutbacks. Troop reduction

TERMINATIONS continued

Government is obligated to pay the Contra for:

- All work completed.
- All preparations made.
- Allowable costs incurred to date of T/C.
- A fair and reasonable profit, BUT, no Anticipato profit
  - Settlement expenses

TERMINATIONS Pages 116-127 continued

Contractor is obligated to:

- Stop work immediately
- Not incur additional costs
- Terminate all subcontracts and orders for supplie
  negotiate settlements
- Notify KO of any legal proceeding resulting from
  termination of subcontracts or orders.
- Take care of Gov't Property in their possession.
- Promptly submit a settlement proposal to the Go

TERMINATIONS continued

DISPUTES:

Contractor MAY NOT dispute a T/C

the contractor can dispute the negot

settlement.

TERMINATIONS continued

6. Termination for Default – Last Res

- Termination for Default is the Governments c right to:
  - completely OR partially terminate a contr
  - because of a Contractor's actual or antici failure to Perform it's contractual obliga

- Problems that lead to default:
  - Failure to deliver supplies/services on time
  - Offering substandard supplies/services for inspec
  - Failure to comply with contract provisions
  - Failure to make performance – won't be complete

TERMINATIONS Continued

- **Termination for Default is not automatic.**

- **Factors to consider before deciding to ter for default:**
  - **Provisions of the contract, applicable laws,**
  - **Specific failure of the contractor and the exc for the failure;**
  - **Availability of supplies or services from othe**
  - **Urgency of the Government's need for the su**
  - **How essential the contractor is to the acquis**
  - **What is the cost of the unfinished work.**

TERMINATIONS

continued

- ✓ Actual Default occurs first time delivery is sub-standa
- ✓ Failure to perform – either the contractor has or has n
- ✓ Cure Notice.
- ✓ Options in lieu of termination.
- ✓ Show Cause Letter.

TERMINATIONS continued

- Government's RIGHTS in a T 4 D
  - **Can repurchase the items terminated;**
  - **Not limited to sealed bidding or negotiation; and**
  - **Gov't can charge the contractor with actual or liquid**
- **Government's OBLIGATIONS to the Contr**
  - **Must repurchase items terminated timely;**
  - **Must be same or similar items;**
  - **Must minimize the damages to the contractor;**
  - **Gov't will allow defaulted contractor to compete fo Repurchase.**

TERMINATIONS continued

- **Role of COR in T/D Action**
  - **Keep the Contracting Officer informed**
  - **Ensure COR records are clear and accura**
  - **May be called upon to appear in Court**

- **Dispute:**
  - **Contractor may dispute a T/D action**
  - **Courts may require contract to be reinst**
  - **Courts may order T/D be converted to T/**

COR TRAINING

CONSTRUCTION

"Any Mission, Anywhere!"

CONSTRUCTION CONTRACTING

NOTE: Physical construction phase begins ONLY after a Notice to Proceed is issued to the Construction Contractor.

- **DEFINITIONS**
  - **Construction**
  - **Plans and Specifications**
  - **Record or As-Built Drawings**
  - **Shop Drawings**

CONSTRUCTION CONTRACTING

- **PRE-CONSTRUCTION CONFERENCE**
  - Clause in Construction Contracts;
  - KO determines whether to hold or not;
  - Held after award but before work begins;
  - Used to establish local ground rules;
  - Contracting Officer chairs;
  - Government meeting is held prior to meeting with the contractor.
  - Results in Partnering Agreement

CONSTRUCTION CONTRACTING

Pages 141-142

1. Notice to Proceed

- **Usually issued 15-30 days after award;**
- **KO's instruction to start work;**
- **Authorizes contractor to spend money;**

Notice of Completion Date

- **Date the contractor is required to complete performance.**
- **Allows COR to monitor in real time schedule.**

CONSTRUCTION CONTRACTING

SUBMITTALS

1. **Submittals Register:**
   - **a list of all submittals required under the contract.**

2. **Submittals are:**
   - **materials and equipment data; samples and shop Drawings**

3. **Submittal Transmittal:**
   - **the form use to transmit the items described in number 1 above.**

CONSTRUCTION CONTRACTING

SUBMITTALS

1. Late, incorrect, or incomplete submittals

2. Government's review and timely response

3. Submittal Log

CONSTRUCTION CONTRACTING

- **CONTRACTOR QUALITY CONTROL**
- **Contractor is responsible for:**

1. **Inspecting, testing and documenting required by the contract.**
2. **Employing a <u>Quality Control Plan (QCP)</u>**
3. **On-site <u>Quality Control Representative (QCR)</u>**

CONSTRUCTION CONTRACTING

- **Quality Control Representative (QCR):**
  - **is the contractor's representative whose purpose it is to ensure the contractor adheres to the quality requirement of the contract.**

CONSTRUCTION CONTRACTING

- **QUALITY ASSURANCE**
  - **Government is responsible for:**

1. Implementing the Quality Assurance Surveillance Program (QASP) and overseeing the Contractor's Quality Control Plan.

2. Ensuring Surveillance is thorough enough to ascertain performance fulfills contract requirements, but remains <u>RELEVANT</u>, <u>REASONABLE</u> & <u>FAIR</u>.

CONSTRUCTION CONTRACTING

- **GOVERNMENT SURVEILLANCE**
  - **Government Surveillance;**
    - **May necessitate holding meetings on quality issues.**
    - **May be conducted by US Government COR/QA /inspectors, Host Nation Government or by another contractor.**

CONSTRUCTION CONTRACTING

- **CONSTRUCTION INSPECTION**

1. FAR Part 46 requires contractors to maintain an adequate inspection system; and to perform inspections that will ensure performance in conformity with the contract.

2. Continuous construction inspection is the CONTRACTOR'S RESPONSIBILITY.

3. Contractor shall maintain inspection records and make them available to the Government.

CONSTRUCTION CONTRACTING

Pages 143-144

- **CONSTRUCTION SURVEILLANCE**

1. Government's surveillance differs from inspection in that specific technical inspection and tests are not performed on a continuing basis.

2. Government's surveillance determines acceptability of materials and workmanship and compliance with contract terms and conditions;

3. Government surveillance shall not become an inspection service for the contractor.

4. COR surveillance responsibilities are the same as under Service

CONSTRUCTION CONTRACTING

- **TESTING & APPROVING MATERIALS/EQUIPMENT/SYSTEMS**

1. **Materials submittals and testing assures compliance with the terms of the contract; and**
2. **Approvals based upon samples submitted by contractor.**
3. **Required tests may be:**

- **laboratory tests performed on a manufactured product;**
- **laboratory tests performed on samples**

CONSTRUCTION CONTRACTING

Pages 144-145

- **PROTOTYPE UNITS can be used:**
  - **as an aid to construction inspection;**
  - **when construction or assembly takes place off site;**
  - **and to inspect and approve work as each stage is completed.**

CONSTRUCTION CONTRACTING

Pages 145-146

SCHEDULE CONTROL

1. Contractor develops the schedule;
2. Developed as Network Schedules;
3. Compared with actual construction completed;
4. KO responsible for review and approval;
5. Schedule must reflect any changes in the work/time extensions due the contractor

CONSTRUCTION CONTRACTING

Pages 146-147

QUANTITY SURVEYS - -

- are computations of the actual work completed under the contract.
- shall be accomplished by the Government when the clause FAR 52.236-16, Quantity Surveys is used.
- shall be accomplished by the Contractor when the clause FAR 52.236-16 Quantity Surveys, Alternate I is used
- However; the Contractor shall conduct the original & final survey for period if requesting progress

CONSTRUCTION CONTRACTING

Pages 146-147

QUANTITY SURVEYS

- **CORs certify Level of Completion for any Progress Payments requests that may be due the contractor for work performed during the preceding payment period.**

- **All surveys shall be conducted under the direction of the COR, unless waived by the KO.**

- **GENERAL RULE Always retain enough funds to complete any work remaining if contractor defaults.**

- **COR ensures payment is authorized ONLY for work actually**

CONSTRUCTION CONTRACTING

CONSTRUCTION CONTRACT MODIFICATIONS:

- are negotiated “mini-contracts” formalized within the scope of the original contract.
- allow equitable adjustments to accommodate various conditions.
- are expensive as they are not competed.

CONSTRUCTION CONTRACTING

- **MODIFICATIONS**
  - **CORs need to:**
    - **Always question the need for modification;**
    - **Track status of modifications.**
    - **Ensure user is not left out of process.**
    - **Ensure modifications are performed by the contractor IAW the negotiated terms and conditions.**

CONSTRUCTION CONTRACTING

- **MODIFICATIONS continued**
  - **CHANGE ORDERS are written changes by the Contracting Officer.**
  - **CHANGE REQUESTS are usually requests from the contractor for changes to the contract.**
  - **CHANGE ORDERS must be limited to those circumstances that would render a facility unusable from a functional standpoint, or are required due to a change in the mission.**

CONSTRUCTION CONTRACTING

- **MODIFICATIONS continued**

- **CLAIMS:**

  - **Are potential or anticipated changes to the contract.**

  - **Must be scoped, validated, designed, and estimated before KO can negotiate.**

CONSTRUCTION CONTRACTING

Pages 148-149

- **CLAIMS MANAGEMENT:**
  - **Allows KO to modify contracts in by ratifying claims from the contractor.**
  - **Allows claims to be minimized with proper planning.**
  - **Resolves claims in a timely manner, I.e.,**

    PROMPT INVESTIGATION
    PROMPT RESPONSE
    PROMPT RESOLUTION

CONSTRUCTION CONTRACTING

- **CLAIMS MANAGEMENT**

  - **Keep good records, & document:**

    Manpower Levels;

    Days or Part Days Worked;

    Where Work Was Performed;

    Contractor Errors;

    Notice of Defects Letters;

    State Reasons If time extensions are not granted on Modifications.

CONSTRUCTION CONTRACTING

- **CLAIMS MANAGEMENT**

- **In settling claims, avoid situations where contractors want to RESERVE the RIGHT to claim additional costs LATER for:**

  - **DELAYS,**
  - **DISRUPTION, and/or**

CONSTRUCTION CONTRACTING

Pages 148-149

- **IF CLAIMS COME TO YOU:**

  - **Notify the Contracting Officer & legal counsel at once.**
  - **Provide your analysis of claim facts, validity & provide recommendations.**

ARCHITECT-ENGINEER LIABILITY (A&E)

FAR Clause 52.236-23, Responsibility of the Architect-Engineer Contract incorporates A & E responsibilities into the contract. This clause defines:

- **A & E Responsibilities regarding the design and any errors or omissions in the design;**
- **Extent of A & E Liabilities regarding document errors and/or damages;**

CONSTRUCTION CONTRACTING

Pages 150-151

ARCHITECT-ENGINEER LIABILITY (A&E)
continued

To determine A&E liability, all of the following must be answered "Yes":

1. Is the construction modification the result of design Errors or Omissions?

2. Do design defects stem from A&E Errors or Omissions?

3. Do Errors or Omissions stem from A&E's negligent failure to meet reasonable standards of A&E field, or from breach of contractual duty?

4. Are there Government damages due to A&E Errors or Omissions?

CONSTRUCTION CONTRACTING

PURSUIT OF ARCHITECT-ENGINEER LIABILITY

1. KO must determine actual damages andestimated administration costs to recoup damages when A&E liability is determined.
2. If estimated recoverable costs for damages exceed admin costs or, in the Government's best interest, the KO is bound by FAR to seek A&E liability.
3. KO must document decision to seek

CONSTRUCTION CONTRACTING

FIELD RELATIONSHIPS

1. Contractor is obligated to finish work on agreed completion date;
2. Government team shall not dictate how the contractor is to proceed to comply with the requirements of the contract;
3. Contractor is responsible for daily scheduling of workers and materials;
4. Contractor shall designate a representative who is authorized to interact with subcontractors and the Government on the jobsite any time work is being performed.
5. Only the KO is authorized to make contract changes.
6. Directions provided by persons other than the KO

CONSTRUCTION CONTRACTING

Pages 151-152

INSPECTIONS AND COMPLETION

- COR performs surveillance during construction to determine acceptability of the various trades.
- Contractor work shall not be accepted without a final inspection.
- Divide inspection & acceptance into 2 phases: PRE-FINAL and FINAL
- COR Inspection team shall not provide an inspection service for the contractor.

CONSTRUCTION CONTRACTING

- **DESIGN DEFICIENCIES:**
  - **Responsibility to build to the design is the construction contractor's.**
  - **Designer and COR are responsible for the correction of the design deficiencies within the scope of the project.**

- **CONSTRUCTION DEFICIENCIES:**
  - **Are, but not limited to, the result of poor workmanship, inadequate inspection (quality control) incomplete construction and interior or damaged**

CONSTRUCTION CONTRACTING

Pages 152-153

- **PREFINAL INSPECTION:**
  - **COR shall schedule the pre-final inspection when the contractor indicates the structures are ready for acceptance.**
  - **COR shall consolidate pre-final inspection deficiencies on individual checklists into a "Punch List", then forward it through the KO to the contractor directing them to correct defects before FINAL INSPECTION.**

CONSTRUCTION CONTRACTING

Pages 152-153

- **FINAL INSPECTION:**
  - **To be sure work is ready to accept before scheduling FINAL INSPECTION, CORS should complete the following:**
    - **<u>PRE-FINAL INSPECTION</u> on all units.**
    - **Lists of discrepancies and forward them to contractor for correction**
    - **Follow-up inspections to determine if Contractor has corrected**

CONSTRUCTION CONTRACTING

- **LIMIT ADDITIONS TO PUNCH LIST TO:**
  - **Damage to other work resulting from correction of work reported on the deficiency list.**
  - **Damage or deterioration resulting from the failure to protect work from exposure to the weather.**
  - **Loss and damage for theft and/or vandalism.**
  - **Deficiencies previously overlooked that would be detrimental to the health and safety of**

CONSTRUCTION CONTRACTING COMPLETION

ACCEPTANCE

- On satisfactory completion of construction, Final Acceptance takes place & the project is judged "Physically Complete".
- The Government assumes complete control and accountability of all units upon completing DD Form 1354, Transfer and Acceptance of Military Real Property.

INCREMENTAL ACCEPTANCE:

- The COR may accept units when contractor completes individual housing units in an area & units pass the Final Inspection.
- After acceptance of units, the Government becomes accountable upon completing the DD Form 1354, Transfer and Acceptance of Military Real Property.

CONSTRUCTION CONTRACTING COMPLETION

INCREMENTAL ACCEPTANCE:

- **The COR may accept units when contractor completes individual housing units in an area & units pass the Final Inspection.**

- **After acceptance of units, the Government becomes accountable upon completing the DD Form 1354, Transfer and Acceptance of Military Real Property.**

- **The Government obtains written agreement with contractor to occupy units before completion & acceptance of entire project.**

- **The agreement shall ensure suitable ingress and egress exists & that occupancy will not hinder contractor operations**

CONSTRUCTION CONTRACTING COMPLETION

- **Even though the Government has accepted units, the contractor is responsible for correction of defects listed at final inspection:**

  a. **incomplete items,**
  b. **latent defects, &**
  c. **items that are warranted.**

- **Warranty period for each unit begins on the date the substantial completion agreement becomes effective.**

- **<u>Final Settlement:</u> If, at time of final settlement, some corrections have not been made due to seasonal concerns, lack of materials, or other reasons, the KO withholds an estimated amount sufficient to**

COMPLETION

FACILITY ACCEPTANCE / BENEFICIAL OCCUPANCY DATE

- **BOD normally occurs after all construction & final inspection are complete,**
- **Partial BOD can take place to allow user to vacate other space to be constructed, or to begin performing their mission.**
- **Discourage partial BOD if partial occupancy serves no advantage for performance of user's mission, as it clouds issues of warranty expiration.**

CONSTRUCTION CONTRACTING COMPLETION

RECORD DRAWINGS (AS-BUILTS)

- Contractor is required to mark 1 set of contract drawings & specifications with the differences between what was required and how the project was actually built.
- These differences should include not only contract modifications, but any differences due to the contractor's selection of materials and installation techniques.
- CORs shall check drawings to ensure they are annotated by required time, & that “As-builts” were filed with Post Civil Engineer or Facilities Mgr

CONSTRUCTION CONTRACTING COMPLETION

COR is responsible for evaluating contractor performance & preparing a performance report using:

DD Form 2626, Performance Evaluation (Construction Contracts) for each construction contract of $500,000 or more; or more than $10,000 if contract was terminated for default.

CONSTRUCTION CONTRACTING COMPLETION

The evaluation and performance report shall be prepared at:

a. time of final acceptance of work,

b. time of contract termination, or

c. other times, as appropriate,in accordance with regulatory guidance and procedures.

The evaluating official preparing the report should be the same person who is responsible for monitoring contract performance.

COMPLETION

Evaluator shall:

- **Advise Contractor in writing that unsatisfactory report is being prepared;**

- **If contractor submits written comments, the evaluating official SHALL:**

  a. include them in the report,

  b. resolve alleged factual

CONSTRUCTION CONTRACTING

COMPLETION

- HCA shall establish procedures to ensure fully qualified personnel;

  1. Prepare the evaluation and performance report;
  2. Review performance reports

- Each report is reviewed to ensure that it is accurate and fair.
- Distribution shall be made in accordance with FAR and DFARS.
- Reports are kept on file for six years;
- FAR Part 9 provides guidance on using reports for making responsibility determinations;

CONSTRUCTION CONTRACTING

COMPLETION

- **POST CONSTRUCTION PROCESS**
  - **Immediately after Final Inspection and Acceptance**
  - **The Project Management role in the post-construction process includes addressing:**
    - **Warranty Support,**
    - **Claims,**
    - **Financial Close Out,**
    - **Post-Occupancy Evaluation, &**
    - **Lessons Learned**

CONSTRUCTION CONTRACTING COMPLETION

- **The COR accepts from contractor then transfers to Post Civil Engineer or Facilities Manager, ALL:**

  door keys,
  operating manuals,
  parts lists,
  spare parts,
  catalogs,

- **guarantees or warranties required by contract. COR certifies the accuracy of the "as-builts" prepared & submitted by the contractor**

CONSTRUCTION CONTRACTING COMPLETION

Pages 156-158

WARRANTY AND GUARANTEE PROGRAM

- **Typical construction warranty is 1 year from date of substantial completion.**

- **Additional Warranty Requirements depend upon:**
  - **Contract requirements; and**
  - **Specific manufacturer's warranties not required by specifications;**

CONSTRUCTION CONTRACTING COMPLETION

Pages 156-158

- **Responsibility for Warranty Program is the Civil Engineer/Facility Manager (CE/FM) after he has accepted the facility and its construction.**

  - **CE/FM documents and verifies that all warranty items are annotated;**
  - **Advises KO when to have contractor return to correct any work under warranty.**

- **Warranty Program includes guidance on:**
  - **Manufacturer's warranties;**
  - **Latent Defects; and**

CONSTRUCTION CONTRACTING COMPLETION

- **MEMORANDUM OF UNDERSTANDING (MOU)**
  - **Provided by the COR;**
  - **Defines Responsibility and procedures during the warranty period;**
  - **Covers:**
    - **Warranty and Guaranty documents**
    - **Points of Contact**
- **POST OCCUPANCY INSPECTION:**
  - **Scheduled 9-11 months after facility is occupied;**
  - **Usually requested by the Post Civil Engineer/Facility Mgr; and**
  - **Is scheduled to ensure all warranty and latent defect items are corrected prior to the**

SUMMARY

1. Understand and be aware of what the contractor is obligated to do in accordance with the contract.
2. Understand the surveillance plan and follow it.
3. Know what the contractor is doing and that they are performing in compliance with the terms and conditions of the contract.
4. Take timely/appropriate corrective actions and remedies to ensure contract compliance.
5. Keep the Contracting Officer informed.
6. Document The File!

SUMMARY cont'd

7. Don't Exceed Your Authority!

8. Do not consider surveillance as an opportunity to be punitive to contractors What we need is quality performance not penalties or Termination.

9. Select the surveillance method that will provide the best assurance of contractor compliance with contract technical standards.

10. Keep the responsibility on contractors to deliver quality performance.

11. Document performance IAW Past Performance.

12. Think of contractors as partners toward mission accomplishment, yet avoid conflicts of interest.